

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Edward A. Garvey
Marshall Johnson
LeRoy Koppendrayner
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Federal Court Remand of
Issues Proceeding from the Interconnection
Agreements Between US WEST
Communications, Inc. and AT&T, MCI, MFS,
and AT&T Wireless

ISSUE DATE: December 6, 2001

DOCKET NO. P-421/CI-99-786

SECOND ORDER ON RECONSIDERATION,
DENYING RELIEF

PROCEDURAL HISTORY

On March 30, 1999 the United States District Court, District of Minnesota, issued Orders in eight appeals from decisions of this Commission resolving interconnection disputes between telecommunications carriers under the federal Telecommunications Act of 1996.¹ In particular, the court remanded to the Commission the question of whether US WEST Communications, Inc. (US WEST) (now Qwest Corporation) must permit competitive local exchange carriers (CLECs) to collocate remote switching units (RSUs) on US WEST's property.²

On March 14, 2000, the Commission issued its ORDER AFTER REMAND. Among other things, this Order reaffirmed the Commission's prior ruling regarding RSUs. Based on its reading of Federal Communications Commission (FCC) rules, the Commission ordered US WEST to permit RSU collocation.

On March 17, 2000, the United States Court of Appeals for the District of Columbia Circuit issued a decision that, among other things, vacated the FCC's rules regarding collocation and remanded the case to the agency for further consideration.³

On March 24, 2000, US WEST filed a Petition for Reconsideration of that portion of the Commission's March 14, 2000 Order concerning RSU collocation.

¹ Pub. L. No. 104-104, 110 Stat. 56 (codified as amended throughout title 47, United States Code).

² See US WEST Communications, Inc. v. Minnesota Public Utilities Commission et al., Civ. 97-913, slip op. (D. Minn. March 30, 1999); US WEST Communications, Inc. v. Minnesota Public Utilities Commission et al., 55 F. Supp.2d 968 (D. Minn. March 30, 1999).

³ GTE Service Corp. v. FCC, 205 F.2d 416, 420-27 (D.C. Cir. 2000).

On July 19, 2000, the Commission issued its ORDER ON RECONSIDERATION, granting US WEST's petition for reconsideration and deferring a decision pending further action by the FCC. The Commission invited comments until 20 days following the effective date of the FCC's anticipated new rules on collocation. In the meantime, the Commission's ORDER AFTER REMAND would remain in effect.

The FCC adopted revised collocation rules on July 12, 2001.⁴ Comments on US WEST's petition were due October 9, 2001.⁵ The Commission received none.

The matter came before the Commission on November 20, 2001.

FINDINGS AND CONCLUSIONS

I. Remote Switching Units

For one caller to communicate with another, their telephone lines must connect. Telephone companies connect these lines through a device called a switch. A switch can directly connect calls within its exchange, and indirectly connect calls beyond its exchange by connecting to other switches. Typically a switch is housed in a building called a central office.

For technical or efficiency reasons, a telephone company may also install a remote switching unit (RSU). An RSU works in conjunction with the central office switch, but is much smaller. As the name implies, an RSU is located away from the central office.⁶

II. Legal Background

The federal Telecommunications Act of 1996 (the Act) is designed to open the nation's telecommunications markets to competition. 47 U.S.C. § 251(c). In particular, section 251(c)(6) of the Act imposes on incumbent local exchange carriers (ILECs) –

[t]he duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State Commission that physical collocation is not practical for technical reasons or because of space limitations.

⁴In Re Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 Fourth Report and Order (FCC 01-204), July 12, 2001 (Fourth Report and Order).

⁵The Federal Register published the rules on August 20, 2001 (66 Fed. Reg. 43516), and they took effect 30 days later, on September 19.

⁶ Fourth Report and Order, ¶47 n.133 (discussing “remote switching module”).

On March 31, 1999, the FCC promulgated rules implementing the Act's requirements including requirements for collocation⁷ (Collocation Order). In the Collocation Order the FCC defined "necessary" in the context of collocation as "used" or "useful." The Minnesota Commission relied on this reasoning when it adopted its March 14, 2000 ORDER AFTER REMAND, requiring ILECs to permit the collocation of used or useful RSUs.

But, as noted above, the United States Court of Appeals for the District of Columbia Circuit subsequently vacated certain portions of the FCC Collocation Order. The Court rejected the FCC's definition of the word "necessary" as being unduly broad as it related to collocation. But the Court declined to adopt an alternative definition, remanding that task to the FCC.

On the basis of the D.C. Circuit Court's decision, US WEST filed its motion for reconsideration. The Commission granted US WEST's motion, but refrained from acting on the motion's merits pending the FCC's subsequent decision on remand.

The FCC has now acted. In construing the word "necessary," the FCC now interprets the Act to require ILECs to permit collocation of equipment --

if an inability to deploy such equipment would, as a practical, economic, or operational matter, preclude the requesting carrier from obtaining interconnection or access to unbundled network elements.⁸

The FCC concluded that a competitor's inability to deploy switching and routing equipment would preclude the competitor from obtaining access to an unbundled network element: specifically, access to the local loop connecting customers to the switch. While an ILEC might have grounds to object to the collocation of especially large or heavy switches, it would not have similar grounds to oppose the collocation of small "remote switching modules."⁹

III. Commission Action

The Commission has invited commentary on this matter, both in its July 19 ORDER ON RECONSIDERATION and at its November 20 hearing. No party has commented.

But the Commission has received input from another quarter. In a separate docket, Qwest filed with this Commission a proposed Statement of Generally Available Terms (SGAT). The SGAT represents Qwest's offer of standard terms for doing business with other telecommunications providers. In particular, Qwest's SGAT allows for collocation of switching equipment that is

⁷ In Re Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761 (March 31, 1999).

⁸See n. 4, *supra*.

⁹*Id.* at ¶¶ 45 - 47.

"necessary" for interconnection or access to unbundled network elements. The SGAT states that RSUs meet this legal standard.¹⁰

On the basis of 1) the FCC's express approval of the collocation of remote switching modules, 2) Qwest's apparent concession that RSUs are "necessary" for access to unbundled network elements, and 3) the absence of arguments to the contrary, the Commission will reaffirm its prior decision. US WEST (now Qwest) must permit competitors to collocate RSUs.

ORDER

1. The request of US WEST (now Qwest) to rescind the portion of the Commission's March 14, 2000 Order that directs US WEST to permit CLECs to collocate RSUs is denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

¹⁰In the Matter of Qwest Corporation's Statement of Generally Available Terms (SGAT) Pursuant to Section 252(f) of the Telecommunications Act of 1996, Docket No. P-421/CI-01-1374, Statement of Generally Available Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunications Services Provided by Qwest Corporation in the State of Minnesota, § 8.2.1.2.3 (October 8, 2001).